

p. 1

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In the Matter of

BEST PAYPHONES, INC.,

Debtor

Case No. 01-B-15472 (SMB)  
Chapter 11

BEST PAYPHONES, INC.,

Debtor-Appellant,

-against-

MANHATTAN TELECOMMUNICATIONS  
CORPORATION,

Claimant-Appellee.

Docket No. 07-Cv-

DESIGNATION OF RECORD

SUPPLEMENTAL ITEMIZATION

**DESIGNATION OF RECORD ON APPEAL—SUPPLEMENTAL ITEMIZATION**

The Appellant designates the following documents as its Record on Appeal.

**Transcripts: (Not Docketed)**

TR1. The transcript of the hearing on September 4, 2002.

TR2. The transcript of the hearing on October 31, 2002.

TR3. The transcript of the hearing on December 24, 2002.

TR4. The transcript of the hearing on January 20, 2004.

TR5. The transcript of the hearing on March 1, 2005.

TR6. The transcript of the hearing on March 21, 2005.

TR7. The transcript of the hearing on June 27, 2006.

**Debtor's Trial Exhibits:**

A. Debtor's Equipment Summary & PPT Data.

F. Transcript of Telephone Conversation with MetTel, December 13, 2000.

G. Letter of MetTel to Debtor, December 4, 2000.

H. Letter of Authorization from NATelCo.

p. 2

I. Letters of Debtor to Michael Thacker and PSC re: Service Interruption, December, 2000.

J. Letter of MetTel to Debtor, December 15, 2000.

K. Letters of Debtor to Aronow and PSC re: Interference with Service to Debtor's PPTs, December, 2000.

L. Letters from NATelCo to Debtor and from Debtor to PSC re: Service Outages and Threatened Disconnection, December, 2000.

O. Letter of Debtor to PSC, May 25, 2001.

S. Agreement, Debtor and NATelCo, November 18, 1998.

X. Letter of City of New York to Debtor, January 13, 2000, and thereafter.

Y. Agreement, Debtor and NYNEX, February 23, 1996.

E1. Department of Information Technology and Telecommunications: Interim Registry of Debtor's PPTs on Public Rights-of-Way.

L1. Best Payphones Service Orders Final from MetTel to Suspend and Disconnect.

S1. NATelCo Tariff and MetTel Tariff, Excerpts.

Z1. Declaration of David Aronow, September 9, 2002, and Letter of MetTel to Debtor, August 2, 2001.

A2. Application to Arkansas Public Service Commission.

J2. Transcript, Deposition of Antoni Economou, September 25, 1006.

K2. Transcript, Deposition of Antoni Economou, September 29, 2006.

W2. Advertisements, Perspective Magazine.

Y2. PaeTec Invoice (Excerpt).

**Claimant's Trial Exhibits:**

1. MetTel's Amended Proof of Claim, February 11, 2002.

2. MetTel's Calculation of Damages.

p. 3

3. Asset Purchase Agreement between MetTel and NATelCo, as of April 4, 2001.

4. Debtors' Motion (without Exhibits), *In re Telecom Consultants, Inc.*, 01/10907 (JHG) to Authorize Sale of Certain Assets, April 5, 2001.

5. Order Establishing Bidding Procedure, *In re Telecom Consultants, Inc.*, April 12, 2001.

6. Notice of Sale of Assets and Opportunity to Submit Higher and Better Offers, *In re Telecom Consultants, Inc.*, April 12, 2001.

7. Certificate of Service Concerning Publication on PR Newswire and in Wall Street Journal, *In re Telecom Consultants, Inc.*, April 12, 2001.

8. Certificate of Service Concerning April 5, 2001 Motion on Various Parties, Including Debtor Herein, *In re Telecom Consultants, Inc.*, April 10, 2001.

9. Amendment No. 1 to Asset Purchase Agreement between MetTel and NATelCo, April 12, 2001.

10. Bill of Sale and Assignment re: Asset Purchase Agreement, April 16, 2001.

11. Payphone Services Agreement between NATelCO and Debtor, as of December 8, 2000.

12. Advance Request and Certificate Authorizing \$3 Million in Wire Transfers in Connection with Asset Purchase Agreement, April 16, 2001.

14. Declarations of Mayne Miller and Michael Chaite, with Exhibits, in Opposition to Motion Authorizing Assignment of NATelCo Payphone Contracts to MetTel, April 18, 2001.

15. Transcript of hearing: *in re Telecom Consultants, Inc.*, April 25, 2001.

18. Emergency Petition for Limited Waiver by MetTel to FCC, April 4, 2001.

19. Order of FCC Granting MetTel's Petition for Limited Waiver, Adopted April 11, Released April 12, 2001.

p. 4

20. Joint Petition of NATelCo and MetTel to PSC for Approval of Assignment of Certain Assets, May 14, 2001.

21. Order of PSC Granting Joint Petition, May 23, 2001.

22. Bill from MetTel to Debtor, April 1, 2001 (Summary Pages).

23. Notice from MetTel to Debtor, May 8, 2001.

24. Tariff of MetTel, § 2.8.4.

25. Agreement of Debtor with BridgeCom, May 15, 2001.

26. Agreement of Debtor with MetTel, September 24, 1999.

31. Verizon 900 Tariff (Excerpts).

32. Order, *In re Telecom Consultants, Inc.*, May 16, 2001.

33. Memo Endorsed: *Best Payphones, Inc. v. Manhattan Telecommunications Corp.*, Case No. 01-CV-6210, September 6, 2001.

35. Verizon 901 Tariff (Excerpts).

36. Verizon 901 Tariff (Excerpts).

**Documents Filed in Debtor's Bankruptcy Case (from Docket Sheet):**

81. Proposed Chapter 11 Plan filed by MetTel July 11, 2002.

82. Disclosure Statement for Chapter 11 Plan filed by MetTel.

82A. Chapter 11 Plan.

82B. Operating Report.

88. Objection by Debtor to MetTel's Proof of Claim, July 31, 2002.

104. Joint Chapter 11 Plan Proposed by Debtor and Michael Chaite, August 19, 2002.

105. Disclosure Statement for Chapter 11 Plan Filed by Debtor and Michael Chaite.

110. Debtor's Corrected Objection to Disclosure Statement Filed by MetTel.

p. 5

113. Letter of Mark Frankel, attorney for MetTel re: Debtor's Confidentiality Demand, August 30, 2002.

115. Letter of Mayne Miller, attorney for Debtor, re: Hearing on MetTel's Disclosure Statement, August 26, 2002.

117. Objection by Michael Chaite to Amended Disclosure Statement of MetTel, September 6, 2002.

119. Objection by MetTel to Debtor's Disclosure Statement, September 6, 2002.

122. Memorandum of Law in Support of Objection filed by MetTel, September 9, 2002.

122X. Declaration in Support of Objection.

122A. Exhibit A to Declaration.

122B. Exhibit B to Declaration.

122C. Exhibit C to Declaration.

122D. Exhibit D to Declaration.

122E. Exhibit E to Declaration.

122F. Exhibit F to Declaration.

122G. Exhibit G to Declaration.

122H. Exhibit H to Declaration.

122I. Exhibit I to Declaration.

122J. Exhibit J to Declaration.

122K. Exhibit K to Declaration.

122L. Exhibit L to Declaration.

122M. Exhibit M to Declaration.

122N. Exhibit N to Declaration.

124. Amended Disclosure Statement for Debtor's Amended Plan, September 9, 2002.

p. 6

125. Amended Chapter 11 Plan Proposed by Debtor and Michael Chaite, September 9, 2002.

126. Amended Chapter 11 Plan Proposed by MetTel, September 10, 2002.

128. Second Amended Disclosure Statement Proposed by MetTel, September 10, 2002.

128B. Exhibit B: Operating Report.

129. Second Amended Disclosure Statement, Redlined, Proposed by MetTel, September 10, 2002.

138. Order Deeming Objection Summary Judgment Motion, September 20, 2002.

139. Second Amended Chapter 11 Plan Proposed by Debtor and Michael Chaite, September 20, 2002.

140. Second Amended Disclosure Statement for Second Amended Chapter 11 Plan Proposed by Debtor and Michael Chaite, September 20, 2002.

140B. Exhibit B, July 2002 Operating Report.

140C. Exhibit C, Schedule of Sources and Uses.

140D1. Projection January 2003.

140D2. Projection February 2003.

140D3. Projection March 2003.

140D4. Projection April 2003.

140D5. Projection May 2003.

140D6. Projection June 2003.

140D7. Projection July 2003.

140D8. Projection August 2003.

140D9. Projection September 2003.

140D10. Projection October 2003.

140D11. Projection November 2003.

p. 7

140D12. Projection December 2003.

145. Statement of Undisputed Facts per LBR 7056-1(a) Filed by MetTel, September 26, 2002.

147. Second Amended Chapter 11 Plan Proposed by MetTel, October 1, 2002.

148. Second Amended Plan, Redlined, Proposed by MetTel, October 1, 2002.

149. Third Amended Disclosure Statement Filed by MetTel, October 1, 2002.

150. Third Amended Disclosure Statement, Redlined, Filed by MetTel, October 1, 2002.

155. Third Amended Chapter 11 Plan Proposed by the Debtor and Michael Chaite, October 9, 2002.

156. Third Amended Disclosure Statement Filed by Debtor and Michael Chaite, October 9, 2002.

156B. Exhibit B: July 2002 Operating Report

156C. Exhibit C: Sources and Uses of Funds.

156D1. Projection January 2003.

156D2. Projection February 2003.

156D3. Projection March 2003.

156D4. Projection April 2003.

156D5. Projection May 2003.

156D6. Projection June 2003.

156D7. Projection July 2003.

156D8. Projection August 2003.

156D9. Projection September 2003.

156D10. Projection October 2003.

156D11. Projection November 2003.

156D12. Projection December 2003.

p. 8

158. Declaration of Michael Chaite, in Reply to Deemed Motion for Summary Judgment, October 12, 2002.

159. Memorandum of Law for Debtor in Opposition to Deemed Motion for Summary Judgment, October 12, 2002.

160. Order Approving Debtor's Third Amended Disclosure Statement, Scheduling Hearing on Confirmation, and Fixing Time for Filing Objections to Confirmation, October 15, 2002.

162. Third Chapter 11 Plan Proposed by MetTel, October 17, 2002.

163. Fourth Amended Disclosure Statement Filed by MetTel in Support of Third Amended Plan, October 17, 2002.

164. Third Amended Chapter 11 Plan, Redlined, Proposed by MetTel, October 17, 2002.

165. Fourth Amended Disclosure Statement, Redlined, Filed by MetTel, October 17, 2002.

166. Reply Declaration in Support of Deemed Motion for Summary Judgment, October 18, 2002.

167. Reply Declaration of David Aronow in Support of Deemed Motion for Summary Judgment, October 18, 2002.

175. Order Approving Disclosure Statement [of MetTel], Setting Hearing on Confirmation of Plan, and Fixing Time to File Ballots and/or Objection to Plan, November 8, 2002.

204. Memorandum Decision Granting in Part and Denying in Part Motion for Partial Summary Judgment by MetTel: MetTel is Allowed its Claim in Amount of \$306,906.72, plus Interest to Petition Date. MetTel is entitled to summary judgment declaring Debtor's liability for Attorneys Fees and Expenses, to be Liquidated in Future Proceedings. Summary Judgment is Otherwise Denied; December 12, 2002.

219. Order Confirming Third Amended Chapter 11 Plan, December 26, 2002.



p. 9

220. Post-Confirmation Order and Notice, December 26, 2002.

221. Letter of Larry Glick for Michael Chaite, to Hon. Stuart M. Bernstein re: Escrow Account, December 26, 2002.

224. Order Granting in Part and Denying in Part Motion of MetTel for Summary Judgment, December 31, 2002.

249. Transcript of Hearing on February 11, 2003.

257. Transcript of Hearing on March 11, 2003.

263. Transcript of Hearing on March 27, 2002, re: Status Conference.

266. Transcript of Hearing on April 16, 2003.

270. Transcript of Hearing on June 17, 2003.

274. Transcript of Hearing on August 20, 2002, re: Disclosure Statement.

278. Transcript of Hearing on October 16, 2002, re: Disclosure Statement Filed by MetTel.

279. Transcript of Hearing on October 10, 2002, re: Disclosure Statement Filed by MetTel.

286. Transcript of Hearing on December 3, 2002, re: Confirmation of Debtor's Plan, Confirmation of MetTel's Plan.

298. Motion by Debtor for Summary Judgment Rejecting a Portion of Claim Filed by MetTel, January 7, 2004.

299. Transcript of Hearing on July 24, 2003, re: Motion of City of New York for Abstention, Debtor's Objection to Proof of Claim Filed by New York City Dept. of Finance, Debtor's Objection to Proof of Claim Filed by Verizon, Court's Order to Show Cause Why a Trustee Should Not Be Appointed to Manage Debtor's Litigations.

300. Declaration (Corrected) of Michael Chaite in Support of Motion for Summary Judgment, January 8, 2004.

302. Declaration by David Aronow in Opposition to Debtor's Motion for Summary Judgment, February 8, 2004.

p. 10

302A. Exhibit A to Declaration.

302B. Exhibit B to Declaration.

302C. Exhibit C to Declaration.

302D. Exhibit D to Declaration.

302E. Exhibit E to Declaration.

302F. Exhibit F to Declaration.

302G. Exhibit G to Declaration.

302H. Exhibit H to Declaration.

302I. Exhibit I to Declaration.

303. Statement Pursuant to LBR § 7056-1(b) Filed by MetTel.

303A. Memorandum of MetTel in Opposition to Debtor's Motion for Summary Judgment.

303B. Affidavit of Service.

312. Reply Declaration of Michael Chaite in Support of Debtor's Motion for Summary Judgment, March 18, 2004.

312A. Exhibit A to Declaration.

312B. Exhibit B to Declaration.

312C. Affidavit of Service (1).

312D. Affidavit of Service (2).

315. Declaration on Issue of Notice and Opportunity to Cure, May 3, 2004.

315A. Exhibit A to Declaration.

315B. Exhibit B to Declaration.

315C. Memorandum of MetTel on Issue of Notice and Opportunity to Cure.

317. Supplemental Memorandum of Law on Anticipatory Repudiation, Filed by Larry Glick for Debtor, May 3, 2004.

320. Order Denying Motion for Summary Judgment Partially Rejecting Claim of MetTel, May 21, 2004.

p. 11

341. Transcript of Hearing on September 26, 2002, re: Disclosure Statement Filed by MetTel, Disclosure Statement Filed by Debtor, Interim Fee Application of Mayne Miller.

342. Transcript of Hearing on September 12, 2002, re: Disclosure Statement of MetTel, Disclosure Statement of Debtor, Request for Confidentiality, Objection to Proofs of Claim.

371. Transcript of Hearing on May 11, 2004, re: Motion for Summary Judgment Partially Rejecting Portion of Claim Filed by MetTel.

372. Transcript of Hearing on March 25, 2004, re: Motion for Summary Judgment.

388. Order Denying MetTel's Motion for Partial Summary Judgment, March 22, 2005.

419. Transcript of Hearing on June 16, 2004.

420. Transcript of Hearing on September 9, 2004.

476. Letter of Charles Ryans, Attorney for Debtor, to Hon. Stuart M. Bernstein, in Reply to February 22, 2006, Letter from Fran Jacobs, March 8, 2006.

483. Order Signed Concerning Completion of Discovery, March 21, 2006.

484. Letter of Charles Ryans, attorney for Debtor, to Hon. Stuart M. Bernstein, with Notice and Proposed Counterorder Concerning Completion of Discovery on MetTel's Claim.

485. Order Concerning Completion of Discovery, March 24, 2006.

488. Letter by Charles Ryans, Attorney for Debtor, to Hon. Stuart M. Bernstein re: Objection to MetTel's Proof of Claim and Discovery, April 14, 2006.

493. Letter of Charles Ryans, Attorney for Debtor, to Hon. Stuart M. Bernstein in Response to Letter of Fran Jacobs Dated May 16, 2006, with Attachment, May 18, 2006.

500. Letter of Charles Ryans, Attorney for Debtor, re: Proposed Counter-Order, June 1, 2006.

p. 12

502. Second Order Re: Completion of Discovery, June 2, 2006.

505. Letter of Charles Ryans, Attorney for Debtor, to Hon. Stuart M. Bernstein  
re: Request for Discovery Conference, June 27, 2006.

505A. Exhibit 1 to Letter.

505B. Exhibit 2 to Letter.

505C. Exhibit 3 to Letter.

505D. Exhibit 4 to Letter.

511. Letter of Charles Ryans, Attorney for Debtor, to Hon. Stuart M. Bernstein,  
in Response to Letter from Fran Jacobs, Dated July 20, 2006, July 20, 2006.

516. Letter of Charles Ryans, Attorney for Debtor, to Hon. Stuart M. Bernstein  
re: Pre-Motion Conference request, August 10, 2006.

517. Letter of Charles Ryans, Attorney for Debtor, re: Request for Discovery  
Conference, August 10, 2006.

517A. Attachment 1 to Letter.

517B. Attachment 2 to Letter.

529. Letter of Charles Ryans, Attorney for Debtor, to Hon. Stuart M. Bernstein  
re: Proposed Counter-Order to Proposed Third Discovery Order Filed by Fran Jacobs, Esq.,  
August 15, 2006.

540. Third Order Concerning the Completion of Discovery, August 16, 2006.

541. Letter of Charles Ryans, for Debtor, Hon. Stuart M. Bernstein re: Supple-  
ment to Letter Dated August 9, 2006, August 18, 2006.

541A. Attachment 1: NATelCo Agreement.

548. Letter of Charles Ryans (Attorney for Debtor) Supplementing Letters of  
June 27, 2006 and August 10, 2006, August 29, 2006.

548A. Attachment # 1 to Letter.

548B. Attachment # 2 to Letter.

548C. Attachment # 2a to Letter.

p. 13

548D. Attachment # 3 to Letter.

548E. Attachment # 4 to Letter.

548F. Attachment # 5 to Letter.

551. Motion to Vacate Declaration of Michael Chaite, Filed by Joseph P. Garland, Attorney for Debtor, September 1, 2006.

551A. Exhibit 1 to Declaration.

551B. Exhibit 2 to Declaration.

551C. Exhibit 3 to Declaration.

551D. Exhibit 4 to Declaration.

551E. Exhibit 5 to Declaration.

551F. Exhibit 6 to Declaration.

560. Declaration of Michael Chaite in support of Summary Judgment Motion, Filed by Joseph Garland, Attorney for Debtor, September 18, 2006.

560A. Exhibit 11 to Declaration.

560B. Exhibit 12 to Declaration.

560C. Exhibit 13 to Declaration.

560D. Exhibit 14 to Declaration.

560E. Exhibit 15 to Declaration.

560F. Exhibit 16 to Declaration.

560G. Exhibit 17 to Declaration.

560H. Exhibit 18 to Declaration.

560I. Exhibit 19 to Declaration.

561. Motion for Summary Judgment Statement Pursuant to LBR § 7056-1(b) Filed by Joseph Garland o/b/o Debtor.

594. Order Determining Debtor's Motions to Vacate ¶ 4 of the December 30, 2002 Order; (2) for summary judgment Dismissing the Claim of MetTel for Damages under

p. 14

the NATelCo Agreement Dated December 8, 2000;and (3) for Leave to Amend Its Objections to MetTel's Proof of Claim, November 14, 2006.

616. Letter of Joseph Garland, Attorney for Debtor, to Chief Judge Bernstein re: Deposition Designation, filed by Joseph Garland, December 20, 2006.

621. Transcript of Hearing on November 1, 2006, re: Motion to Amend Objection, Debtor's Motion for Summary Judgment, and Motion to Vacate December 2002 Order, December 26, 2006.

627. Proposed Findings of Fact and Conclusions of Law by MetTel, January 4, 2007.

630. Transcript of the Trial on December 4, 2006, Debtor's Motion for Summary Judgment of MetTel's Lost Profits Claim.

631. Transcript of the Trial on December 13, 2006, Debtor's Motion for Summary Judgment of MetTel's Lost Profits Claim.

632. Transcript of the Trial on December 16, 2006, Debtor's Motion for Summary Judgment of MetTel's Lost Profits Claim.

638. Response of Debtor to Proposed Findings of Fact and Conclusions of Law of MetTel, January 29, 2007.

639. Corrected Response to Proposed Findings of Fact and Conclusions of Law by Debtor, January 30, 2007.

639A. Appendix A to Debtor's Proposed Findings of Fact.

639B. Appendix B to Debtor's Proposed Findings of Fact.

639C. Appendix C to Debtor's Proposed Findings of Fact.

639D. Appendix D to Debtor's Proposed Findings of Fact.

639E. Appendix E to Debtor's Proposed Findings of Fact.

639F. Appendix F to Debtor's Proposed Findings of Fact.

641. Reply to Findings of Fact and Conclusions of Law by Debtor, Filed by MetTel, February 13, 2007.

641A. Attachment to Reply.

643. Letter of Fran Jacobs, Attorney for MetTel to Hon. Stuart M. Bernstein re: Typographical Errors Discovered on Pages 2, 7, 18, 20, 23, 37, 41, 43, and 44 of the Reply, February 16, 2007.

649. Reply to Findings of Fact and Conclusions of Law by Debtor, Duplicate Copy, April 27, 2007.

650. Post-Trial Findings of Fact and Conclusions of Law Signed by Hon. Stuart M. Bernstein, May 8, 2007, Entered May 9, 2007.

651. Notice of Settlement of Judgment filed by MetTel, May 10, 2007.

651A. Judgment.

651B. Post-Trial Findings of Fact and Conclusions of Law # 1.

651C. Post-Trial Findings of Fact and Conclusions of Law # 2.

651D. Post-Trial Findings of Fact and Conclusions of Law # 3.

653. Judgment Signed May 17, 2007, Index No. BC 07.0067.

Dated: New York, New York  
June 9, 2007

/s/ Mayne Miller  
MAYNE MILLER (MM-4106)  
21-55 45<sup>th</sup> Road, 2<sup>nd</sup> Floor  
Long Island City, New York  
Mail: P.O. Box 8050, G.P.O.  
New York, NY 10116  
(718) 472-1900  
Attorney for Appellant

